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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

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**Application for a Certificate of Convenience and Necessity to Provide Resold
Interexchange Service and for Determination that Services of the Applicant are
Competitive**

**Applicant: NovaTel Ltd., Inc.
Docket No.: T-20601A-08-0351**

On July 10, 2008, NovaTel Ltd., ("NovaTel" or "Applicant" or "Company"), filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance services in Arizona. On September 26, 2008 and October 28, 2008, NovaTel filed revisions to its proposed tariff.

Staff's review of the amended application addresses the overall fitness of the Applicant to receive a CC&N to provide competitive resold intrastate interexchange telecommunications services. Staff's review considers the Applicant's technical and financial capabilities, and whether the Applicant's proposed rates will be just and reasonable.

REVIEW OF APPLICANT INFORMATION

Staff makes the following finding, indicated by an "X," regarding information filed by the Applicant:

- ☒ **The necessary information has been filed to process this Application, and the Applicant has authority to transact business in the State of Arizona.**
- ☒ **The Applicant has published legal notice of the Application in all counties where service will be provided.** On May 12, 2009, the Applicant filed an Affidavit of Publication in the counties where the authority to provide resold long distance telecommunications services is requested.

REVIEW OF TECHNICAL INFORMATION

The Applicant has demonstrated sufficient technical capability to provide the proposed services for the following reasons, which are marked:

- ☐ **The Applicant is currently providing service in Arizona.**
- ☒ **The Applicant is currently providing service in other states.**
- ☒ **The Applicant is a switchless reseller.**

Arizona Corporation Commission

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[Signature]

☒ X

In the event the Applicant experiences financial difficulty, end users can access other interexchange service providers.

The Applicant stated in its application that it is authorized to provide telecommunications service in four states (California, Florida, New Jersey, and Texas) and has applications to provide telecommunications services pending in six other states. In its application, the Applicant also states that the Company has not been denied authorization to provide telecommunications. According to the application, the Applicant has eight key management employees with a combined experience of over 69 years in the telecommunications industry and related fields.

Staff contacted the four state Commissions to verify that NovaTel is certificated or registered to provide resold long distance telecommunications services in the states listed in the application. Staff also inquired if there were any consumer complaints against NovaTel. According to the state Commissions from which Staff was able to obtain information, NovaTel has had zero consumer complaints filed against it.

The Applicant indicated that none of its officers, directors or partners had been involved in any civil or criminal investigations, formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners had been convicted of any criminal acts in the past ten (10) years.

REVIEW OF FINANCIAL INFORMATION

☒ X

The Applicant is required to have a performance bond to provide resold interexchange service in the State of Arizona.

The Applicant did provide audited financial statements for the twelve months ending December 31, 2009. The financial information provided lists total assets of \$5,365,927; total equity of (\$5,202,925); and a net income of (\$2,248,290). The Applicant stated in its revised proposed tariff, Section 2.8 page 16, that it does collect deposits from its customers. Staff believes that any deposits received from the Applicant's customers should be protected by the procurement of either a performance bond or an irrevocable sight draft Letter of Credit ("ISDLC"). The Commission's current performance bond or ISDLC requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$10,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the deposits is within 10 percent of the total minimum performance bond or ISDLC amount.

Staff recommends that the Applicant procure a performance bond or ISDLC equal to \$10,000. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its

customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or an ISDLC be docketed within 90 days of the effective date of a Decision in this matter or at least ten days before the first customer is served, whichever comes first. The original bond or ISDLC should be filed with the Commission's Business Office and copies of the bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the bond or ISDLC on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the bond or ISDLC funds, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

If the Applicant experiences financial difficulty, there should be minimal impact to the customers of the Applicant because there are many companies that provide resold interexchange telecommunications service or the customers may choose a facilities-based provider. The Applicant is proposing to provide only resold interexchange telecommunications services. If the Applicant desires to provide other telecommunications services other than resold interexchange services, Staff recommends that the Applicant file an application with the Commission and affirm that the Applicant's customers will be able to access alternative interexchange service providers to resellers. In the longer term, the customers may permanently switch to another company.

REVIEW OF PROPOSED TARIFF AND FAIR VALUE DETERMINATION

- ☒ **The Applicant has filed a proposed tariff with the Commission.**
- ☒ **The Applicant has filed sufficient information with the Commission to make a fair value determination.**

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

COMPETITIVE SERVICES' RATES AND CHARGES

Competitive Services

The Applicant is a reseller of services it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the intrastate interexchange market by restricting output or raising market prices. In addition, the entities from which the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms, and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

Effective Rates

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with Arizona Administrative Code ("A.A.C.") R14-2-1109. The Commission's rules require the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with A.A.C. R14-2-1109.

Minimum and Maximum Rates

A.A.C. R14-2-1109 (A) provides that minimum rates for the Applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Applicant's tariffs must comply with A.A.C. R14-2-1110.

STAFF RECOMMENDATIONS

Staff has reviewed the Application for a Certificate of Convenience and Necessity to offer intrastate interexchange services as a reseller and the Applicant's petition to classify its intrastate interexchange services as competitive. Based on its evaluation of the Applicant's technical and financial capabilities to provide resold intrastate interexchange services, Staff recommends approval of the Application. In addition, Staff further recommends that:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;
7. The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
8. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name address or telephone number;
9. The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
10. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
11. In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate;

12. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis;
13. If the Applicant desires to provide other telecommunications services other than resold interexchange services, Staff recommends that the Applicant file an application with the Commission and affirm that the Applicant's customers will be able to access alternative interexchange service providers to resellers; and
14. In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.

Staff recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first, and in accordance with the Decision.
2. The Applicant shall:
 - a. Procure a performance bond or ISDLC in the amount of \$10,000. The minimum performance bond or ISDLC amount of \$10,000 should be increased if at anytime it would be insufficient to cover any prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$5,000. This increase should occur when the total amount of the prepayments is within \$1,000 of the performance bond or ISDLC amount.
 - b. File the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or at least ten days before the first customer is served, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that NovaTel is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect NovaTel's

customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments collected from NovaTel's customers.

- c. As a compliance item in this docket, NovaTel shall provide notice to the Commission within 30 days of the first customer being served.

This application may be approved without a hearing pursuant to A.R.S. § 40-282.



Date: 8/4/10

for

Steven M. Olea
Director
Utilities Division

Originator: Candrea Allen

SERVICE LIST FOR: NovaTel Ltd., Inc.
DOCKET NO. T-20601A-08-0351

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